

DATE: 9/6/88

=====X
UNITED STATES OF AMERICA

INDEX TO RECORD ON APPEAL

DISTRICT COURT DOCKET # 83CR412(S)JMA

RELATED CASE # (If Any) MISC. 88-34

JUDGE McLaughlin

C/A DOCKET # 88-1083

-against-

ANGELO RUBGIERO, et al

=====X

Supplemental

INDEX PREPARED BY:

John Gleeson AUSA

FIRM ADDRESS:

225 Cadman Plaza East

Brooklyn New York 11201

PHONE NUMBER :

718 330-7038

DOCKET ENTRIES A -

DOCUMENT #

LIST OF DOCUMENTS

48	Transcript of Proceedings 1/21/88 (EN BANC) MISC 88-34.
49	Transcript of Proceedings 1/22/88 MISC 88-34
50	Transcript of Proceedings 1/13/88
51	Order DATED 1/22/88 (EN BANC) Misc. 88-34
52	Order Dated 3/31/88 (Jmm) re: Record on Appeal
(S) 53	Sealed Documents
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(S) 56	Sealed Documents
(S) 57	Sealed Documents

CLERK'S CERTIFICATE

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK
225 CADMAN PLAZA EAST
BROOKLYN, NEW YORK 11201

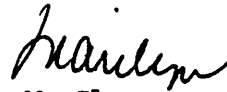
ROBERT C. HEINEMANN
CLERK

JAMES GIOKAS
CHIEF DEPUTY

PLEASE NOTE:

THE DOCUMENTS FILED IN MISC. 88-34
HAVE BEEN SENT AS A SUPPLEMENTAL
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THE DOCKET SHEET FOR MISC. 88-34
HAS BEEN SENT FOR YOUR INFORMATION



M. Glenn,
Deputy Clerk

PLEASE NOTE THAT SEALED DOCUMENTS
ARE INCLUDED.

FILED 07/20/16 **DATE:** **7/16/16** Page 3 of 25 PageID #: 3

EASTERN DISTRICT OF NEW YORK

=====X

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48 Transcript of Proceedings 1/21/88 (EN BANC) Misc 88-34.

49 Transcript of Proceedings 11/22/88 Misc 88-24

50 Transcript of Proceedings 1/13/88

51	Order DATED 11/2/88 (EN Banc) Misc. 88-34
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52	Order Dated 3/31/88 (Jmm) re: Record on Appeal
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(S)53	Sealed Documents
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(S)54 Sealed Documents

(S) 55 : Sealed Documents

(S) 56	Sealed Documents
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(S) 57	Sealed Document
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CLERK'S CERTIFICATE



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U.S. DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :

CR-83-412(S)

MISC. 88-34

(In Re Grand Jury)

v. :

United States Courthouse
Brooklyn, New York

ANGELO RUGGIERO,
GENE GOTTI,
JOHN CARNEGLIA,
ANTHONY MOSCATIELLO,
EDWARD LINO,
MARK REITER,
JOSEPH LO PRESTI,
ANTHONY GURINO,
CESAR GURINO,
OSCAR ANSOURIAN,

JAN 22 1988

RECEIVED IN JUDGE
COSTANTINO'S CHAMBERS

Defendants.

January 21, 1988

: 1:00 o'clock p.m.

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TRANSCRIPT OF TRIAL/MOTION
BEFORE THE HONORABLE CHIEF JUDGE JACK B. WEINSTEIN
MARK A. COSTANTINO
I. LEO GLASSER
EUGENE H. NICKERSON
JOSEPH M. McLAUGHLIN
CHARLES P. SIFTON
JOHN R. BARTELS
THOMAS C. PLATT
LEONARD D. WEXLER

UNITED STATES DISTRICT JUDGES

APPEARANCES:

For the Government:

ANDREW J. MALONEY

(n)

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United States Attorney

LAWRENCE A. URGENSON
Chief Assistant US Attorney

JOHN GLEESON
Assistant US Attorney

ROBERT LA RUSSO
Assistant US Attorney

JACK SHANNON,
Special AUSA

225 Cadman Plaza East
Brooklyn, New York 11201

For the Defendant Ruggiero:	JEFFREY HOFFMAN, ESQ.
For the Defendant Gotti:	RONALD FISCHETTI, ESQ.
For the Defendant Carneglia:	ANTHONY LOMBARDINO, ESQ.
For the Defendant Moscatiello:	EDWIN SCHULMAN, ESQ.
For the Defendant Lino:	ROBERT KATZBERG, ESQ.
For the Defendant Reiter:	BENJAMIN BRAFFMAN, ESQ.
For the Defendant Lo Presti:	DAVID DE PETRIS, ESQ.
For the Defendant A. Gurino:	DAVID LEWIS, ESQ.
For the Defendant C. Gurino:	ROBERT FOGELNEST, ESQ.
For the Defendant Ansourian:	MARTIN GEDULDIG, ESQ.

Court Reporter:	Sheldon Silverman
	225 Cadman Plaza East
	Brooklyn, New York 11201
	(718) 330-7687

Proceedings recorded by mechanical stenography, transcript
produced by CAT

CHIEF JUDGE WEINSTEIN: We'll hear from the government
first.

MR. MALONEY: Your Honor, first I would like to know

1 what procedures we're following as far as closure. I
2 understand the jury is no longer sequestered. The matters
3 discussed here are of such a sensitive nature it could impact
4 on that issue.

5 CHIEF JUDGE WEINSTEIN: Are you moving to exclude the
6 public from the hearing?

7 MR. MALONEY: Yes, your Honor, sequestration of the
8 jury, of course.

9 CHIEF JUDGE WEINSTEIN: Sequestration of the jury is a
10 matter for Judge Costantino. It would be inappropriate at this
11 point to exclude the public. Do any of my colleagues
12 disagree?

13 (No response).

14 CHIEF JUDGE WEINSTEIN: Motion denied.

15 MR. MALONEY: The next question, your Honor, we just
16 submitted an affidavit to the Court which I've asked to be
17 sealed. Is your Honor unsealing that affidavit along with the
18 papers previously submitted?

19 CHIEF JUDGE WEINSTEIN: The papers are not unsealed.
20 We also have defendants' brief. Is that submitted under seal?

21 MR. HOFFMAN: Yes, it is, your Honor.

22 CHIEF JUDGE WEINSTEIN: The papers are not unsealed.
23 Whatever is a matter of public record already will remain a
24 matter of public record. Whether these papers will be sealed
25 is a matter of further determination.

1 MR. MALONEY: If your Honor please, it's rather
2 awkward to make oral argument. Much of the material is sealed
3 before this Court. I would ask your Honor since we have
4 submitted the material to your Honor that we previously
5 submitted to Judge Costantino if your Honor has a specific area
6 of inquiry you want us to respond to?

7 CHIEF JUDGE WEINSTEIN: Do any of the counsel contest
8 the right of the Court to sit en banc?

9 MR. FISCHETTI: Your Honor, most respectfully on
10 behalf of my client, Eugene Gotti, we received information last
11 night from Judge Costantino's chambers that we were to be here
12 at 1:00 o'clock today with papers, if we could submit them. I
13 tell your Honor that --

14 JUDGE MC LAUGHLIN: Hold your voices up.

15 MR. FISCHETTI: Certainly, Judge McLaughlin. I'll do
16 the best I can.

17 We endeavored to submit those papers which we have
18 submitted to the Court. We worked through the evening. I can
19 assure the Court no one in my office has been to bed as yet
20 from the time we received the notification from Judge
21 Costantino.

22 We requested of Judge Costantino's chambers at that
23 point to know the nature and the extent, the authority for the
24 en banc proceeding at this point and we were not provided with
25 that information, I'm sure for good reason, but whatever reason

1 we were not provided for it.

2 During the evening we conducted as much research as
3 possible while, in effect, preparing a lengthy memorandum
4 which, in effect, we believe disputes what the government has
5 submitted in their memoranda. The purpose of these remarks to
6 the Court is that since this is an extraordinary proceeding we
7 are willing to proceed in any manner the Court would like us to
8 proceed in this matter.

9 However, we do not and cannot at this stage waive any
10 objections we might have to this extraordinary proceeding. We
11 have not physically had the time to determine how this
12 proceeding will go forward and what is the authority for the
13 proceedings, for the Court to enact this very extraordinary
14 session.

15 CHIEF JUDGE WEINSTEIN: Thank you. The bench would
16 like the grand jury minutes and any documents submitted to the
17 grand jury in connection with what the government has said, as
18 we understand it, is an inquiry with respect to possible
19 tampering with the jury.

20 MR. MALONEY: Your Honor, that request is being
21 honored. It's already being submitted or copied, if your Honor
22 please.

23 There is some material, however, which we refer to in
24 the recent affidavit just submitted to the Court that we
25 respectfully decline to submit for reasons set forth --

1 CHIEF JUDGE WEINSTEIN: Submit what you have.

2 What page of your affidavit indicates what you don't
3 want to submit?

4 JUDGE SIFTON: Page 6.

5 JUDGE COSTANTINO: Five and six, starts at the bottom
6 of page 5.

7 CHIEF JUDGE WEINSTEIN: I don't seem to have the
8 affidavit.

9 JUDGE COSTANTINO: Bottom of page 5 of Mr. Maloney's
10 affidavit.

11 CHIEF JUDGE WEINSTEIN: Would you give me a copy,
12 please?

13 MR. MALONEY: Starts the bottom of page 5. I can read
14 those paragraphs. I don't think they're of such a nature I
15 couldn't read them.

16 CHIEF JUDGE WEINSTEIN: Please do.

17 MR. MALONEY: Bottom of page 5 of the affidavit.

18 In response to Judge Weinstein's request, we are
19 providing the Court with copies of all grand jury transcripts
20 and investigative reports prepared in connection with the jury
21 tampering investigation. These materials do not include
22 handwritten notes containing source information, which notes
23 are currently being safeguarded by the FBI.

24 Paragraph 14. As stated in our papers, some of the
25 confidential information is so singular in nature that it

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1 cannot be disclosed without revealing or creating an undue risk
2 of revealing the identities of the confidential sources.

3 For the same reason, the government cannot reveal any
4 additional information regarding the background of the
5 informants themselves. In this connection, I have conferred
6 this morning by telephone with the director of the FBI, William
7 S. Sessions. Sessions has advised me that the FBI cannot
8 disclose this source information because to do so would
9 jeopardize the lives of government informants and cause
10 irreparable damage to a series of investigations, which, in the
11 judgment of the FBI, are of the highest priority.

12 CHIEF JUDGE WEINSTEIN: All I want at the moment is to
13 know whether all information submitted to the grand jury has
14 been submitted to this Court.

15 MR. MALONEY: Yes, your Honor. If it hasn't, it will
16 be. Copies are right here on the table, I understand.

17 CHIEF JUDGE WEINSTEIN: Then you are complying with
18 the request of the Court to submit all grand jury information?

19 MR. MALONEY: Yes, your Honor.

20 I understand your Honor's request to be more general
21 than that.

22 CHIEF JUDGE WEINSTEIN: No, it's specific.

23 Where are the materials now?

24 MR. MALONEY: We ask, of course, the Court accept this
25 in camera, keep them sealed. This is an ongoing grand jury

1 investigation.

2 CHIEF JUDGE WEINSTEIN: I'll take ten copies, please.

3 Is each set marked "Confidential"?

4 MR. GLEESON: Your Honor, I haven't had an opportunity
5 to mark each of them confidential.

6 CHIEF JUDGE WEINSTEIN: The judges will do that.

7 Anything further the government wishes to add at this
8 time?

9 MR. MALONEY: Other than the papers we've submitted,
10 no, your Honor.

11 CHIEF JUDGE WEINSTEIN: The defendants wish to add
12 anything?

13 (No response.)

14 CHIEF JUDGE WEINSTEIN: The key issue before the Court
15 in addition to the question of whether the government had the
16 right to prevent the grand jury information from being revealed
17 to the Court is, as I understand the contention of the
18 defendants, that the grand jury investigation and allegations
19 of the government are essentially not bona fide; that the
20 matter was revealed to the Court trying the case and that the
21 publicity was generated deliberately by the government in order
22 to prevent the jury from further deliberation in a fair and
23 proper way and to provide a basis for a mistrial which the
24 defendants oppose, thereby, as I understand your argument,
25 attempting to preclude the defendants from relying upon the

1 double jeopardy defense should the action be sought to be
2 retried.

3 Is that essentially your position?

4 MR. FISCHETTI: Your Honor, our position is laid out
5 in detail in our papers. Your Honor has a sense of what our
6 position is.

7 CHIEF JUDGE WEINSTEIN: Well, if it's different from
8 what I said, you better indicate what your position is
9 explicitly and tell us why we should not consider the issue of
10 whether the Government's bringing this to the attention of the
11 trial judge was in bad faith, designed to create the necessity
12 of a mistrial.

13 MR. FISCHETTI: Your Honor, I will respond, but your
14 Honor realizes that the papers have been submitted under seal.
15 If your Honor will allow me to speak in a fashion where
16 information in our papers are not disclosed since they're under
17 seal, I will respond as best as I can.

18 First of all, your Honor, may I inform the Court that
19 I am speaking now with a voice for Gene Gotti. There are other
20 defendants involved in this proceeding. Their counsel may also
21 wish to be heard and add to my remarks or may not agree with my
22 remarks, but our position basically is, your Honor, that a voir
23 dire was conducted by Judge Costantino in camera based upon
24 information supplied to him by the government. We were not
25 notified of that voir dire nor allowed to have any input into

1 what that voir dire and the questions would be asked of those
2 jurors.

3 The voir dire stated, your Honor, unequivocally, and
4 this is on the public record, that each and every one of the
5 jurors stated unequivocally that they had not been compromised,
6 approached, contacted by any party in this case, neither the
7 defendants nor any of their associates or friends.

8 The Government's position then was that that voir dire
9 was not sufficient, although the questions that were asked were
10 asked by the government and were repeated by Judge Costantino
11 in my judgment in substance.

12 Subsequent to that, your Honor, a second voir dire
13 occurred. This voir dire occurred in open court and when it
14 occurred in open court the jurors again were asked the same
15 questions as to whether or not they had been compromised,
16 approached or in any manner tampered with during the trial of
17 this action. Again, each answer was no as to those
18 allegations.

19 The Government's position went further than that,
20 Judge, that the voir dire should not be accepted by the Judge.
21 We note, your Honor, in the Government's papers it is curiously
22 absent that the voir dire unequivocally stated that no juror
23 had been, in fact, approached or tampered with.

24 Following that, Judge, a hearing occurred. We opposed
25 the hearing on the basis that the voir dire itself should have

1 been sufficient. The hearing, we submit, your Honor, and we
2 detail it in our papers, did not rise to any standard of a
3 presumption that this juror had been -- or any juror -- had in
4 fact been tampered with.

5 We detailed that in our papers. Many of the matters
6 that are submitted in our papers are under seal. I ask of the
7 Court since we submitted our papers at one o'clock, the bench
8 has not had an opportunity to review our papers, that the Court
9 review our papers to see what our argument is in that regard.

10 We are now left in a position because during the
11 second voir dire, at least three jurors have indicated
12 substantially that they cannot be fair jurors in this case. I
13 won't detail their remarks. Their remarks are in the record.
14 I'm sure the Court is familiar with them.

15 We're now left in a position where we have 11 jurors
16 in this case who can possibly continue to sit.

17 Our position is that the government has failed to
18 disclose to anyone, including Judge Costantino, any basis for
19 jury tampering which would necessitate the type of
20 extraordinary procedure that occurred in this case. Your Honor
21 has an affidavit that you now have received under seal from
22 Mr. Maloney.

23 What I can say which was on the public record is that
24 during the time we conducted this hearing we had an in camera
25 proceeding when remarks were made by the United States Attorney

1 of this district that a juror had been compromised. We
2 requested, Judge, that even if we were not allowed because of
3 security reasons to learn the identity of that juror, any
4 information regarding that juror, that Judge Costantino should
5 at least be allowed to see a submission from the government, an
6 FBI 302, some report, extracting the name of the informant but
7 detailing at least what the allegations are. That did not
8 occur.

9 At the hearing, your Honor, that was conducted in open
10 court, the evidence that was submitted by the government, in
11 our judgment, was woefully inadequate and did not reach the
12 standard that the Court would reach in order to determine jury
13 tampering.

14 We have, as an example, which is on the public record,
15 an affidavit that was submitted by an FBI agent who testified
16 that he had no knowledge as to the contents of that affidavit
17 and whether the facts contained in that affidavit were, in
18 fact, true. We established that the agent who was in
19 possession of that information was in fact in the courthouse
20 that day. It seemed to us, your Honor, that we were at least
21 entitled to examine that FBI agent without disclosing the
22 source of his information, just determining what the
23 information was.

24 For all of those reasons and further reasons we've
25 expressed in our brief, your Honor, we suggested that these

1 proceedings have forced us into a position where we now have
2 less than 12 jurors who can be fair. In that type of
3 situation, your Honor, it seems to us that those jurors must be
4 excused.

5 However, your Honor, we are not -- and I must state
6 this as clearly as I can for the record -- moving for a
7 mistrial in this case. Whether or not it is a determination
8 that this case ends on a basis of manifest necessity so that
9 jeopardy does not apply to a second retrial, if, in effect,
10 there is one, is an issue, we feel, to be decided by the judge
11 who is going to handle the retrial of this case the next time
12 around. It is simply not an issue for this Court.

13 I point out one further thing, your Honor. The record
14 itself in this trial speaks for itself. Whether or not the
15 Government's position is correct that the proof against these
16 defendants was, in fact, overwhelming, the record will reveal.

17 However, since the government chose to put in its
18 memorandum detailed facts of why there is proof of overwhelming
19 guilt against each of these defendants, we were forced in the
20 limited time available to us to make additions to that record
21 and to put in our papers exactly what occurred during the trial
22 which is a strong indication, we believe, your Honor, that the
23 Government's position is not as it states.

24 I call to the Court's attention that we are talking
25 about a trial that began with jury selection in April,

1 commenced in June and we are now here in the month of January.
2 The government has placed on the record the overwhelming
3 evidence of guilt of these defendants without any indication as
4 to what a defense would be in this case. We have heard nothing
5 about that. We have not had, if I may say, our turn at bat,
6 but just on what happened during this trial I think your Honor
7 will find -- the Court will find most respectfully -- that the
8 government's position that we have lost this proceeding and,
9 therefore, it was a reason for these defendants or some of them
10 or any of them to attempt to tamper with the jury is faulty in
11 and of itself.

12 Further than that, your Honor, I would rely on our
13 papers and I would ask the Court review those papers prior to
14 making any decision in this case. If your Honor wishes further
15 argument in that regard, we would be happy to comply with
16 that.

17 With regard to the Government's new submission, this
18 affidavit, I have an argument, your Honor. It's an argument,
19 quite frankly, that I cannot make on the basis of this
20 affidavit. I think the fact that the government filed this
21 affidavit, what's contained in this affidavit has absolutely no
22 bearing in this case as to the determination as to whether or
23 not any person in this case, in this trial, attempted to tamper
24 with a juror.

25 Our position is, Judge, we have been placed in this

1 position by the Government's activity and we are now nine
2 months into a trial and, quite frankly, Judge, and I say this
3 with as much candor as I possibly can. I've been before each
4 judge here over the years that I've practiced as many of my
5 brethren have, we spent through 3:00 o'clock, 4:00 o'clock and
6 5:00 o'clock in the morning attempting to determine what
7 alternatives we could come up with to try to salvage this
8 prosecution.

9 No one, especially my client, who has been in this
10 courthouse for two years -- and this is his second trial, your
11 Honor -- wants this trial to abort, but I as his attorney on
12 the basis of the answers that we've received from jurors in
13 this case and what has happened by virtue of the United States
14 Attorney's action cannot see how we can go forward with a fair
15 and impartial jury in this particular case, sir.

16 CHIEF JUDGE WEINSTEIN: Any other defense counsel wish
17 to be heard?

18 MR. HOFFMAN: Yes, your Honor.

19 Very briefly Mr. Fischetti has -- I represent Angelo
20 Ruggiero. Mr. Fischetti has basically stated our overall
21 position. I want to supplement briefly, to keep in mind we
22 have papers we submitted and ask your Honors to read.

23 But to be specific in terms of supplementing it, it's
24 our position the voir dire which was originally done by Judge
25 Costantino which was requested by the government based on

1 sealed papers that were submitted to him and which the defense
2 knew nothing about until after it occurred was, in fact, a voir
3 dire which the government expected based on their moving papers
4 for that voir dire to show that the jury had been in some way
5 tampered with.

6 When that jury answered in a manner not to show that,
7 that should have been the end of it. At that point I believe
8 they were surprised. At that point they came forth, asked for
9 a hearing which ordinarily is asked for to get the voir dire.
10 That hearing caused the resultant publicity and the resultant
11 problems.

12 A few days later, as the result of that hearing, when
13 the jury was voir dired again in open court, the jurors
14 answered in the way in which they did. I just want to make it
15 very clear it's our position that the original hearing --
16 excuse me, the original voir dire is usually what you get if
17 you succeed at a hearing. They succeeded in getting that
18 based on their application. When they didn't like it they
19 asked for a hearing and the hearing caused the problems we now
20 have.

21 The additional point I would like to make to the Court
22 is that, again, because it's under seal without spelling it
23 out, the affidavit that was just submitted with a particular
24 exhibit and I just read briefly, I believe not only as
25 Mr. Fischetti says has no bearing on this matter, but may be --

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1 and I haven't had a chance to sit down with the rule, it irks
2 me, I want to alert your Honor to it -- may be an 11(e)
3 violation.

4 If you look at the exhibit because I don't think that
5 exhibit and the surrounding reasons for it belong in any kind
6 of proceeding as per 11(e).

7 Thank you, your Honor.

8 MR. BRAFFMAN: Excuse me, your Honor, my name is
9 Benjamin Braffman. I represent the defendant Mark Reiter.

10 Very briefly, sir, because the matter is under seal,
11 if I could respectfully request that your Honor refer to page 2
12 of the Government's most recent submission, just so the record
13 is accurate.

14 CHIEF JUDGE WEINSTEIN: Which submission are you
15 referring to?

16 MR. BRAFFMAN: The affidavit of Mr. Maloney submitted
17 just a moment ago, page 2, your Honor, with respect to the
18 defendant Mark Reiter. That simply is inaccurate. I want the
19 record to reflect that, that Mr. Reiter was never part of any
20 11(e) proceeding nor was his counsel ever in negotiation with
21 the government as alleged in the affidavit.

22 I agree with Mr. Fischetti and Mr. Hoffman that that
23 affidavit and that exhibit annexed thereto has really no
24 bearing on this proceeding. What I would like to say, sir,
25 most respectfully, to this entire court is that your Honors

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1 please keep in the forefront of your mind as you review this
2 matter, that there are, indeed, individuals on trial here, and
3 not even the government has alleged that each of the defendants
4 has participated in any misconduct.

5 With respect to the defendant Mark Reiter, your Honor,
6 I would just simply point out when this trial began many, many
7 months ago and continuously thereafter, Mr. Reiter had a
8 serious double jeopardy issue which wound its way up in the
9 Second Circuit, back down and we went to trial, but the fact
10 remains Mr. Reiter was acquitted in the Southern District for a
11 conspiracy that dated the same conspiracy charged in this
12 indictment.

13 Accordingly, before this trial started, on behalf of
14 Mr. Reiter, moved for a severance on his behalf claiming that
15 the case against Mr. Reiter and I think the government agreed,
16 could be tried separately in one week.

17 CHIEF JUDGE WEINSTEIN: We're not really interested in
18 that.

19 JUDGE COSTANTINO: That argument was made before me
20 many times, need not be made here. That's not what we're here
21 for.

22 MR. BRAFFMAN: I ask the Court on the issue before the
23 Court to consider, most respectfully, the concern we have if
24 the government is not willing to disclose the underlying
25 information even to this Court, then the dangerous precedent

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1 that would set if the government in this or any other
2 jurisdiction that looks to this decision were to decide that a
3 trial should be aborted. It is very easy for a confidential
4 source to whisper something to a government agent. As long as
5 that information is never put to a test we have no way of
6 knowing whether the information is reliable or made in good
7 faith.

8 Thank you.

9 MR. HOFFMAN: If I may, I'm sorry, one point I left
10 out. It's this. Your Honor asked our concern, our position
11 vis-a-vis a finding made by this Court. As you'll see in our
12 papers, but I want to direct you to it, my feeling is that
13 before any finding should be made in terms of the basis for
14 these jurors -- perhaps losing the jury, perhaps having a
15 mistrial, that a hearing is appropriate on that issue and that
16 at such a hearing members of the government might be called as
17 witnesses and that there's case law for the Court to consider
18 that jurors themselves might well be questioned.

19 Toward that end I would ask your Honors to keep in
20 mind that we may be making an application according to what the
21 Court ultimately determines to be allowed to question jurors
22 under Court supervision. That's a very, very important
23 aspect.

24 CHIEF JUDGE WEINSTEIN: Thank you. Any other defense
25 counsel?

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1 MR. FISCHETTI: One final word, your Honor. I'm
2 sorry, it's an extraordinary proceeding. I'm speaking to our
3 defense counsel as I rise, but your Honor, it seems to me, it
4 seems to us, that the only question before this bench is
5 whether or not this trial can go forward, not the reason, not
6 the good faith or bad faith of the government in this
7 particular instance because we feel, sir, that once that
8 decision is made that the trial cannot go forward, if that is
9 the decision, then we have certain rights and certain rights to
10 a hearing before the next judge or any judge to make a
11 determination on how it was caused. As Mr. Hoffman said, we
12 would be able to call witnesses.

13 We suggest to this tribunal the question before this
14 Court is whether or not the trial can go forward in its present
15 form. Other than that, we feel that we have certain rights
16 that must be preserved.

17 CHIEF JUDGE WEINSTEIN: Thank you.

18 Does the government wish to respond?

19 MR. MALONEY: Yes, very briefly, your Honor.

20 Your Honor, we had a duty to bring this motion. Had
21 we not brought it, had there been a conviction, we would have
22 been attacked for not bringing this information to the Court.

23 As to the good faith of bringing their case, bringing
24 this motion, I think our memorandum submitted would answer
25 that, certainly the affidavit which is under seal just

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1 submitted to the Court bespeaks of that.

2 Finally, a senior federal trial judge who sat through
3 8 months of this case, I think, can pass on the weight of the
4 Government's evidence in this case.

5 As for the publicity engendered by this hearing, from
6 the very beginning the government pressed for sequestration.
7 The defendants vigorously opposed it. Not only opposed it but
8 had public television press conference in front of this
9 courthouse and on radio. Now, because of that, probably, we
10 have some jurors who can no longer sit.

11 I have nothing further to add, your Honor.

12 THE COURT: The Court is adjourned. Make sure we have
13 sufficient copies of that record, please. The clerk will
14 collect the copies and bring them.

15 (Whereupon this matter was concluded for this date.)
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A large, stylized handwritten signature in black ink, slanted diagonally across the lower right portion of the page.